

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**WRIT PETITION NO. 10787 OF 2014**

Vinayak s/o Ukhaarda Javare  
Age : 42 years, Occ-Agril  
R/o Jambhuldhaba, Tq. Malkapur,  
Dist.Buldhana

.. PETITIONER  
(Ori.Deft.No.10)

Versus

Madhukar s/o Tulshiram Patil  
Age 41 years, Occ-Agril & Service  
R/o Chinchkhed (Kh),Tq.  
Muktainagar,Dist.Jalgaon  
At present C/o  
Sunil s/o Govardhan Patil  
Near Gayatri Temple, Muktainagar  
Tq. Muktainagar,Dist.Jalgaon

.. RESPONDENTS  
(Ori.Plaintiff)

...

Shri N.K.Chaudhari,Adv. for petitioner  
Respondent - Party in person

...

**CORAM : N.W.SAMBRE,J.  
DATED : 19TH NOVEMBER,2015**

**ORAL JUDGMENT :-**

The Respondent herein filed a suit for declaration that the present petitioner and other defendants thereto have no right over

the suit property and are not legal representatives of late Darabai Daulat Patil. It is also claimed by the Respondent, in the said suit bearing R.C.S.No.20 of 2010, that the sale deed dated 21<sup>st</sup> January, 2010, executed by defendants no.1 to 9 to the suit, be declared as illegal.

2] In the suit, an application Exhibit-48 claimed to be filed by Respondent – original plaintiff praying therein about referring the consent letter given by Madhukar Tulshiram Patil (Ghait) to Handwriting Expert for verifying the hand writing and signature thereon.

3] The application Exhibit-48 was objected by the petitioner. By order dated 8<sup>th</sup> October, 2015, application Exhibit-48 came to be allowed by Civil Judge, Junior Division, Muktainagar.

4] From the record, since defendant has denied execution of consent deed in question, and also denied signature over the consent deed, and upon perusal of both the signatures, having compared that with his admitted signature on Vakalatnama, noted that there is a difference and inconsistency. So as to then ascertain, whether the signature on the consent deed is that of plaintiff or not, learned Trial Court ordered reference thereof to the Handwriting Expert.

5] Heard Mr. Choudhary, learned counsel appearing on behalf of the petitioner, and the respondent in person. While inviting my attention to Rule 4 of Order XVIII of the Code of Civil Procedure and Sections 67 and 73 of the Evidence Act, Mr.Choudhary would urge that the cumulative effect of these provisions is not dealt with and taken into account by the Court below. In support of his submissions,

learned counsel, by placing reliance on the judgment of this Court in the matter of **Bharat R. Desai and another V/s Naina Mohanlal Bhal, reported in AIR 2005 Bombay. 38**, would urge that the reasons cited in the impugned order is not in accordance with the above referred statutory provisions. According to him, the matter needs to be remanded for fresh consideration so as to evaluate effect of the provisions of Order XXVI Rules 9 & 10, Order XVIII Rule 4(2) of the Code of Civil Procedure and Sections 67 and 73 of the Evidence Act.

6] The respondent, who is appearing in person, is unable to assist the Court, particularly in the light of legal submissions made by the learned counsel for the petitioner and has also not opted for taking legal aid in the matter.

7] In view of above, this Court has proceeded to consider the claim.

8] It is required to be noted here that the occasion for the trial Court to pass the impugned order appears to be taking recourse to the provisions of Section 73 of the Evidence Act by comparing the signature of the respondent with that of on the consent deed and on the Vakalatnama. However, the evaluation of such submission and effect thereof, pursuant to the provisions of Order XVIII Rule 4(2) of the Code of Civil Procedure and Section 67 of the Evidence Act, is not reflected in the order impugned.

9] In view of above, in my opinion, it will be appropriate to set aside the order dated 8<sup>th</sup> October, 2014, passed below Exhibit-48, in Regular Civil Suit No.20 of 2010, with liberty to the learned Trial Court to pass a fresh order below Exhibit-48, after considering the

above referred statutory provisions.

10] The petition, as such, stands partly allowed in above terms. In the circumstances, there shall be no order as to costs.

**(N.W.SAMBRE,J.)**

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